

§ 299.7

32 CFR Ch. I (7–1–10 Edition)

cost estimate shall be sent to the Directorate(s) and Associate Directorate(s) expected to maintain responsive records. If DC3 assigns a fee category to a requester which differs from that claimed by the requester or determines that a waiver or reduction of fees is not appropriate, DC3 shall notify the requester of this discrepancy and of the estimated cost of processing the request. The requester shall be given 60 days to provide additional substantiation for the fee status claimed or for a fee waiver or reduction. The requester shall be advised that his/her request shall not be processed until the discrepancy over the fee category, fee waiver or reduction, or both are resolved. He/she shall also be advised of his/her right to appeal DC3's determination. A fee waiver or reduction shall be granted or denied in accordance with DoD 5400.7-R and based on information provided by the requester. If the requester does not respond to DC3's initial notification of the discrepancy in fee assessment within the 60 days, DC3's determination about that requester's fee status shall be final.

(b) Fees shall reflect only direct search, review (in the case of commercial requesters) and duplication costs, recovery of which are permitted by 5 U.S.C. 552. Fees shall not be used to discourage requesters.

(c) No minimum fee may be charged. Fees under \$25.00 shall be waived.

(d) Fees shall be based on estimates provided by appropriate organizational focal points. Upon completion of the processing of the request and computation of all assessable fees, the request shall be handled as follows:

(1) If the earlier cost estimate was under \$250.00 and the requester has not yet paid and has no payment history, the requester shall be notified of the actual cost and shall be sent a bill under separate cover. Upon receipt of payment, processing results and non-exempt information shall be provided to the requester.

(2) In cases where the requester paid prior to processing, if the actual costs exceed the estimated costs, the requester shall be notified of the remaining fees due. Processing results and non-exempt information shall be pro-

vided to the requester upon payment of the amount in excess or, if less than \$250.00, receipt of the requester's agreement to pay. If the requester refuses to pay the amount in excess, processing of the request will be terminated with notice to the requester.

(3) In cases where the requester paid prior to processing, if the actual costs are less than estimated fees which have been collected from the requester, processing results and the non-exempt information shall be provided to the requester, and the FOIA office shall advise Accounting and Financial Services of the need to refund funds to the requester.

(e) Fees for manual searches, review time and personnel costs associated with computer searches shall be computed according to the following schedule:

Type	Grade	Hourly rate
(1) Clerical	E9/GS8 and below	\$20
(2) Professional	O1–O6/GS9–GS15 ...	44
(3) Executive	O7/SCE/SLE/SLP	75
(4) Contractor	44

(f) Fees for machine time involved in computer searches shall be based on the direct cost of retrieving information from the computer, including associated input/output costs.

(g) Search costs for audiovisual documentary material shall be computed as for any other record. Duplication costs shall be the actual, direct cost of reproducing the material, including the wage of the person doing the work. Audiovisual materials provided to a requester need not be in reproducible format or quality.

(h) Duplication fees shall be assessed according to the following schedule:

Type	Cost per page
(1) Office Copy	\$.15
(2) Microfiche25
(3) Printed Material02

§ 299.7 Exempt records.

(a) Records meeting the exemption criteria of 5 U.S.C. 552 need not be published in the FEDERAL REGISTER, made available in a reading room, or provided in response to requests made under 5 U.S.C. 552.

(b) The first seven of the following nine FOIA exemptions may be used by the NSA/CSS to withhold information in whole or in part from public disclosure when there is a sound legal basis for protecting the information. Discretionary releases shall be made following careful Agency consideration of the interests involved.

(1) Records specifically authorized under criteria established by an Executive Order to be kept secret in the interest of national defense or foreign policy and which are in fact properly classified pursuant to such Executive Order.

(2) Records relating solely to the internal personnel rules and practices of an agency.

(3) Records which concern matters that a statute specifically exempts from disclosure, so long as the statutory exemptions permit no discretion on what matters are exempt; or matters which meet criteria established for withholding by the statute, or which are particularly referred to by the statute as being matters to be withheld. Examples of such statutes are:

(i) The National Security Agency Act of 1959 (Public Law 86-36 Section 6);

(ii) 18 U.S.C. 798;

(iii) 50 U.S.C. 403-3(c)(6);

(iv) 10 U.S.C. 130; and

(v) 10 U.S.C. 2305(g).

(4) Records containing trade secrets and commercial or financial information obtained from a person and privileged or confidential.

(5) Interagency or intra-agency memoranda or letters that would not be available by law to a party other than an agency in litigation with the agency.

(6) Personnel and medical files and similar files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(7) Investigatory records compiled for law enforcement purposes, but only to the extent that the production of such records:

(i) Could reasonably be expected to interfere with enforcement proceedings;

(ii) Would deprive a person of the right to a fair trial or to an impartial adjudication;

(iii) Could reasonably be expected to constitute an unwarranted invasion of personal privacy of a living person, including surviving family members of an individual identified in such a record;

(iv) Could reasonably be expected to disclose the identity of a confidential source, including a source within NSA/CSS, state, local, or foreign agency or authority, or any private institution which furnishes the information on a confidential basis, or could disclose information furnished from a confidential source and obtained by a criminal law enforcement authority in a criminal investigation or by an agency conducting a lawful national security intelligence investigation;

(v) Would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law; and

(vi) Could reasonably be expected to endanger the life or physical safety of any individual.

(8) Records contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions.

(9) Geological and geophysical information and data, including maps, concerning wells.

(c) Information which has not been given a security classification pursuant to the criteria of an Executive Order, but which may be withheld from the public for one or more of FOIA exemptions 2 through 9 cited in paragraphs (b)(2) through (b)(9) of this section, shall be considered "UNCLASSIFIED//FOR OFFICIAL USE ONLY" (U//FOUO). No other material shall be considered or marked U//FOUO. The marking of appropriate records with the U//FOUO designation at the time of their creation provides notice of U//FOUO content and shall facilitate review when a record is requested under the FOIA. However, records requested under the FOIA which do not bear the

§ 299.7

32 CFR Ch. I (7–1–10 Edition)

U//FOUO designation shall not be assumed to be releaseable without examination for the presence of information

that requires continued protection and qualifies as exempt from public release.